

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL A. WESNER,

Petitioner,

vs.

SCOTT FRAKES, Director, Nebraska
Department of Correctional Services;

Respondent.

8:19CV391

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Motion for Order to Stay, Suspend/Halt Respondent's Motion for Summary Judgment. ([Filing 14](#).) Petitioner asks the court to "stay, suspend/halt" Respondent's summary judgment motion ([filing 11](#)) filed on June 15, 2020 and to "take this matter under judicial notice, as to whether Petitioner's habeas petition is barred by the limitation period as set forth in 28 U.S.C. sec. 2244(d)" and "examine diligently the record, as filed, on June 15, 2020." ([Filing 14](#).)

A stay and abeyance of a federal habeas corpus petition is only appropriate in "limited circumstances." *Rhines v. Weber*, 544 U.S. 269, 277 (2005). A court may order a stay and abeyance only when there is good cause for the petitioner's failure to exhaust his claims in state court, the claims are not "plainly meritless," and the petitioner has not "engaged in intentionally dilatory litigation tactics." *Id.* at 277–78.

Here, Petitioner does not seek a stay to pursue any unexhausted claims and he is clearly not entitled to any stay of these proceedings. Rather, Petitioner seems to be asking the court merely to carefully consider Respondent's summary judgment motion. As outlined in the court's progression order ([filing 6](#)), Respondent has elected to file a motion for summary judgment and has filed and

served the motion, the necessary state court records, and a supporting brief. Now, Petitioner has until **July 15, 2020** to file and serve a brief in opposition to the motion for summary judgment and he “may not submit other documents unless directed to do so by the court.” ([Filing 6 at CM/ECF p. 3.](#)) After Petitioner files and serves his brief, Respondent shall have 30 days to file and serve a reply brief or a notice of case submission if no reply brief will be filed. Once all the briefing is completed, the court will carefully consider the parties’ arguments and the records to reach a decision on the motion. Accordingly,

IT IS ORDERED that:

1. Petitioner’s Motion for Order to Stay, Suspend/Halt Respondent’s Motion for Summary Judgment ([filing 14](#)) is denied.
2. Petitioner is advised that he has until **July 15, 2020** to file and serve a brief in opposition to Respondent’s motion for summary judgment.

Dated this 26th day of June, 2020.

BY THE COURT:

Richard G. Kopf
Richard G. Kopf
Senior United States District Judge